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Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1262

GENERAL MOTORS CORPORATION, et al., *Petitioners,*

v.

DOUGLAS M. COSTLE, Administrator of the Environmental Protection Agency, ENVIRONMENTAL PROTECTION AGENCY, AND STATE OF CALIFORNIA, *Respondents.*

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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Chrysler Corporation
Motor and Equipment Manufacturers Association
Automobile Importers of America, Inc.
Automotive Service Industry Association, *et al.*

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GENERAL MOTORS CORPORATION, et al., *Petitioners,*

v.

DOUGLAS M. COSTLE, Administrator of the Environmental Protection Agency, ENVIRONMENTAL PROTECTION AGENCY, AND STATE OF CALIFORNIA, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered below in the consolidated proceedings on the petitions for review.[1]

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[1] The petitioners, and the respective docket numbers of their petitions below, are: General Motors Corporation (CA No. 78-1944); Chrysler Corporation (CA No. 78-1943); Motor and Equipment Manufacturers Association (CA No. 78-1896); Automobile Importers of America, Inc. (intervenor below); and Automotive Service Industry Association, along with Tomadur Engine Company, Central Automotive Wholesale Company, Benson & Zimmerman Co., Inc., Safeguard Automotive Corp., Del Wright D/B/A Palisades Garage, and John Heyler D/B/A Heyler Automotive (CA No. 78-1901).

OPINIONS BELOW

The decision of the Administrator of the Environmental Protection Agency ("EPA") appears at 43 Fed. Reg. 32182 (1978). A subsequent modifying letter is not reported. The opinion of the Court of Appeals is not yet reported. Copies of these documents appear in the Appendix hereto. App. at 73a, 86a, 1a.

JURISDICTION

The jurisdiction of the Court of Appeals was invoked pursuant to Section 307 of the Clean Air Act, 42 U.S.C. § 7607. The judgment of the Court of Appeals was entered on August 3, 1979. A timely joint petition for rehearing and suggestion for rehearing *en banc* was denied on September 17, 1979. On December 14, 1979, Mr. Chief Justice Burger granted petitioners' timely joint application to extend the time to file a petition for a writ of certiorari until February 14, 1980. Copies of the referenced orders appear in the Appendix hereto. App. at 70a, 71a, 72a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The Clean Air Act ("Act") expressly preempts state regulations governing air pollutants from new motor vehicles. But with respect to the State of California, Congress established a scheme under which California may apply to the EPA Administrator to conduct a hearing and thereafter to waive the Act's preemption for California regulations. Considering itself bound to adopt EPA's construction of the Act, the court below held, however, that EPA's waiver review is to be "largely ministerial" and that EPA may not consider the impact of a waiver of preemption on, *inter alia,* air quality, automobile safety, or constitutional rights. Therefore the questions presented are:

1. Did the court below err by expressly endorsing the EPA Administrator's role in a waiver proceeding as "largely ministerial," thereby allowing the Administrator to "rubber stamp"

this and other waiver applications, contrary to the Act and the fundamental principles of administrative law requiring agencies affirmatively to protect federal interests confided to their care by Congress?

2. Did the court below err by sanctioning the EPA Administrator's refusal to consider whether the restrictions imposed by California's motor vehicle maintenance regulations will degrade air quality, adversely affect the "public health and welfare," compromise automobile safety, restrain competition, and unconstitutionally restrict commercial free speech?

3. Did the court below err by concluding that the waiver and California's regulations do not violate free speech rights even though the regulations severely restrict manufacturers' dissemination of essential motor vehicle maintenance information to the consumer?

4. Did the court below err by holding that petitioners must show by "clear and convincing evidence" that the EPA Administrator's statutory interpretations are not only *erroneous* but also "*unreasonable*"?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

First and Fourteenth Amendments to the United States Constitution, App. at 88a.

Section 207(a), 42 U.S.C. § 7541(a), App. at 88a, which requires manufacturers to warrant that emissions control systems of new motor vehicles will be defect free for five years or 50,000 miles, whichever comes first.

Section 207(c), 42 U.S.C. § 7541(c), App. at 90a, which requires manufacturers to provide "proper" maintenance instructions for the care of emissions control systems and authorizes the Administrator to order the recall of vehicles that exceed emissions standards although properly maintained and used.

Section 209(a), 42 U.S.C. § 7543(a), App. at 94a, which preempts state regulation of emissions from new motor vehicles.

Section 209(b), 42 U.S.C. § 7543(b), App. at 94a, which defines the circumstances under which the Administrator may waive federal preemption for California regulations.

STATEMENT OF THE CASE

A. Nature of the Case

Petitioners represent a wide cross-section of the automobile industry. The issues here, however, are of equal, if not greater, importance to automobile purchasers, the citizens of California, and the nation's air quality. The Clean Air Act preempts state regulations governing air pollutants from new motor vehicles in Section 209(a). But in certain statutorily defined circumstances, Section 209(b) requires the EPA Administrator to conduct a hearing and empowers him thereafter to waive express federal preemption for California's regulations. Here the EPA Administrator waived federal preemption for California's "in-use maintenance regulations," which prohibit manufacturers from effectively communicating with their customers about the maintenance essential for the proper operation of their automobiles.

This case marks the first judicial construction of the Administrator's responsibilities under Section 209(b). It raises important questions of statutory interpretation about Section 209(b)—particularly, whether the Administrator has an affirmative obligation in waiver proceedings to protect and preserve certain federal policies set forth in the Act. Also at issue is an important constitutional question—whether the court below wrongfully upheld the waiver for California's regulations even though they substantially interfere with automakers' free speech rights to inform customers about proper and lawful preventive maintenance and with consumers' interest in receiving such information in a useful and factual manner. Finally, the case raises the fundamental issue whether the court below met its duty to inquire independently into the meaning of Section 209(b) when it held it must defer to EPA's statutory construction unless private petitioners demonstrate by "clear and convincing" evidence that the agency's construction is "unreasonable."

B. Proceedings Below

Section 203 of the Act, 42 U.S.C. § 7522, provides that an automaker may not sell a new vehicle unless it certifies and warrants that the vehicle model will comply with applicable emissions control standards for five years or 50,000 miles, whichever comes first. The manufacturer bases its certification on the results of "certification testing," in which prototype vehicles are operated almost continuously for 50,000 miles over a period of approximately four months to determine whether a particular engine family meets applicable emissions standards. *See* Act §§ 202, 203, 206, 207, 42 U.S.C. §§ 7521, 7522, 7525, 7541. To enhance the predictive value of certification testing, EPA and California have limited the amount of vehicle maintenance that manufacturers may perform during such testing. In this case, however, California has sought to transfer such certification maintenance limitations willy-nilly into the entirely different area of the *in-use* maintenance instructions that automakers give to the millions of individual drivers who operate their cars under countless different conditions over the five-year period. This regulatory escapade suppresses essential communications between manufacturers and customers, threatens consumers' safe, economical, and pollution-free enjoyment of their cars, and is expected to increase the warranty burden imposed on manufacturers far beyond what Congress intended.

The purchaser of a new automobile receives from the manufacturer an owner's manual, in-use maintenance schedules, or both. These documents specify the maintenance operations that the automaker believes necessary for safe operation of the vehicle, emissions control, fuel economy, vehicle durability, and generally satisfactory vehicle performance. (J.A. 1287, 3312-16.)[2] Studies have shown that routine and proper maintenance operations contribute substantially to clean air because emissions from properly maintained vehicles are well below both existing federal emissions standards and the more stringent

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[2] References to "J.A." are to the Joint Appendix in the Court of Appeals.

California emissions standards for which the Administrator has granted waivers of federal preemption. (J.A. 102-03, 1024, 1027, 1799, 2863-64.) Congress recognized this fact in Section 207(c)(3) of the Act, 42 U.S.C. § 7541(c)(3), which requires manufacturers to furnish maintenance instructions for emissions control components. In addition, consumers are "responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at [their] expense at any service establishment or facility of [their] choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control." Act § 207(g), 42 U.S.C. § 7541(g). Section 207 further provides that the consumer's failure to perform such maintenance is a defense to the manufacturer's liability under statutory emissions warranties imposed by Section 207.[3]

California Regulatory Proceedings. Despite the congressional mandate for in-use maintenance instructions, California launched a broad attack on such instructions. On May 26, 1977, California promulgated its initial in-use maintenance regulations. These regulations provided that automakers' maintenance instructions could recommend to consumers no more than nine discrete maintenance operations for the first 50,000 miles of a car's life. App. at 96a-99a. That list was developed for certification testing maintenance and then simply transposed to the context of in-use maintenance on the basis of the "gut feeling" of a member of the staff of California's Air Resources Board ("ARB"), not based upon any evidence, that restrictions on the number of in-use maintenance recommendations would improve emissions performance. The ARB staff reasoned that if owners did not bring their vehicles in for maintenance, mechanics could not deliberately tamper with, or accidentally maladjust, emissions controls and thereby cause higher emissions levels. (J.A. A99; *see* J.A. 104, 109, 2760-61.)

[3] Section 207(a) provides that manufacturers of new motor vehicles must warrant that each vehicle is "free from defects in materials and workmanship" and designed to meet applicable emissions standards. This defect warranty extends for the vehicle's "useful life," defined by Section 202(d), 42 U.S.C. § 7521(d), to be 5 years or 50,000 miles, whichever comes first. In addition, Section 207(c)(1) requires manufacturers to recall vehicles if the Administrator determines that such vehicles do not comply with emissions standards even though maintenance instructions have been followed.

The nine maintenance operations originally permitted to be recommended are shown graphically *infra* at 30-31. The maintenance that petitioner General Motors believes is necessary, specifies in the other 49 states, and would otherwise have specified in California is shown graphically *infra* at 28-29. California's regulations were the first incursion of state or federal regulations into the field of in-use maintenance instructions. These procrustean regulations severely limited the strategies that automakers may pursue to meet emissions standards, for the regulations disregard variations between different kinds of engine families and emissions hardware, variations that dictate different maintenance patterns. (J.A. 105, 108, 140, 1284, 3420-21, 3430-31, 3468.) They also rearrange the balance that Congress struck in Section 207 of the Act, increasing dramatically manufacturers' liability exposure under the statutory warranties and substantially reducing the maintenance obligations of consumers. *See supra* at 6 & n.3. Moreover, given the diversity of environmental conditions and driver habits encountered over 50,000 miles of usage and five years of life, manufacturers strongly believed, on the basis of engineering and field experience, that considerably more maintenance is necessary to ensure adequate emissions control, safety, fuel economy, durability, and the like. (J.A. 1300, 1303-05, 2890-91, 3008-13, 3312-20.)[4]

[4] For competitive reasons, automobile manufacturers have every incentive to reduce maintenance intervals to the minimum amount possible and in fact have reduced scheduled maintenance substantially over the past decade. (J.A. 2892-93, 3306-10.) Nonetheless, automakers believed that the regulations did not allow them to specify enough maintenance, especially since maintenance could be recommended only on the basis of accumulated mileage, as opposed to elapsed time. Petitioners presented evidence concerning the need to make alternative maintenance recommendations based on accumulated mileage or elapsed time because real-life driving differs

Proceedings Before the Administrator. California applied under Section 209(b) for a waiver of federal preemption. To qualify for a waiver, California must first determine unequivocally that its "State standards *will be,* in the aggregate, at least as protective of public health and welfare as applicable Federal standards." (Emphasis added.)[5] To ensure that California properly discharges that responsibility, the Administrator must conduct a public hearing on every waiver request. He is to deny a waiver if he finds that (1) California's "will be . . . as protective" determination is arbitrary and capricious, (2) California does not need the proposed standards to meet extraordinary conditions, or (3) the state standards or accompanying enforcement procedures are technologically infeasible, taking into consideration the cost of compliance. *See* Act § 209(b), Subparagraphs (A)-(C).

The Administrator granted California's waiver request, in an opinion that eviscerated the statutory tests and transformed the hearing process, set forth in the statute, into a hollow formality. Because the lower court's erroneous acquiescence in the Administrator's statutory interpretations is a central issue in this case, those interpretations are set forth below:

(1) As the Administrator read Section 209(b), he has no authority to require that California justify, or even explain, its waiver request or to inquire into the record to ensure that the policies of the Act are protected.[6] In his view, his sole obligation

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from certification testing. (J.A. 1305, 3312-13.) That evidence was never even addressed by California, EPA, or the reviewing court. Manufacturer petitioners are left to wonder if the only adequate proof of their contention would be to run a whole fleet of cars for five years under widely diverse operating conditions.

[5] The Act ordinarily requires far less categorical findings of fact. *See, e.g.,* § 202(a)(1), (b)(6)(A)(ii), 42 U.S.C. § 7521(a)(1), (b)(6)(A)(ii).

[6] The Administrator stated, "[T]he manufacturer has the burden of demonstrating the existence of grounds upon which, under the criteria enumerated in section 209(b), I must deny a waiver request." 43 Fed. Reg. at 32184, App. at 80a (footnote omitted); *see id.* at 32182-83, App. at 73a-74a, 76a.

under Section 209(b) is to adjudicate when private parties interpose the very narrow range of objections that he deems relevant in a Section 209(b) proceeding. Thus, as stated in the Government's brief to the court below, "the Administrator must grant a waiver for any unopposed request. . . ," regardless of the state of the record or the consequences for air quality and other national interests protected by the Act. EPA Br. at 44. And even when a private party objects that the regulations will adversely affect the "public health and welfare," the Administrator persists in his passive, if not negative, role. He presumes the validity of California's application, even if unexplained and unsupported by the record, and will deny a waiver only if opposing private parties demonstrate to him that "clear and compelling" grounds exist on which the waiver should be denied. 43 Fed. Reg. at 32183, App. at 76a. Moreover, because of his excessively narrow construction of the statutory tests, *see infra* paragraphs (2)-(4), he will ignore altogether much of the evidence presented by such parties, thereby making it impossible for opponents to make the showing he requires of them.

(2) Even though private parties introduced evidence that California's regulations *adversely affect air quality* (J.A. 1281-82, 1803-06, 3312-13, 3413), the Administrator dismissed such evidence as "beyond [his] narrow scope of review" under Section 209(b)(1)(A)'s "arbitrary and capricious" test. 43 Fed. Reg. at 32184 & n.41, App. at 81a-82a. In so doing, the Administrator did not explain how he can perform his statutory duty to evalutate the reasonableness of California's "will be . . . as protective" determination without considering the effect of the underlying regulations on air quality.

(3) The Administrator refused altogether to consider, under Section 209(b)(1)(B), whether California "needed" its in-use maintenance regulations "to meet compelling and extraordinary conditions" in the state, despite the evidence that the restrictions would degrade air quality. He said that regardless of the potential effect on air quality, the Subparagraph (B) "need" test is inapplicable to "accompanying enforcement procedures," which he defined, without any statutory basis, to in-

clude all regulations other than numerical emissions standards (*e.g.*, 3.4 grams of carbon monoxide per mile). *Id.* at 32182, App. at 74a.[7]

(4) The Administrator refused to consider evidence pertaining to the effect of the in-use maintenance regulations on other "public health and welfare" concerns which the Act would require the Administrator to consider in promulgating federal regulations (including automobile safety, fuel efficiency, cost to the consumer, and preservation of competition in the automotive industry). Similarly, he dismissed, as beyond the scope of his authority, petitioners' constitutional contentions that California's regulations violated manufacturers' and consumers' First Amendment interests and denied manufacturers a federally-prescribed defense against warranty claims. *Id.* at 32184-85, App. at 82a, 83a-84a.

The Administrator's opinion is thus a litany of unfounded statutory interpretations that allow him to avoid any independent search of the record and prevent him from even considering material evidence and legal concerns presented by petitioners.

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[7] The court below sustained the statutory revisionism inherent in the Administrator's holding that when a regulation other than a numerical standard is proposed for waiver, he may consider only two questions: (1) whether the enforcement procedure is so lax that it undermines the validity of the "will be. . .as protective" determination for California's numerical standards, and (2) whether the enforcement procedures are technologically feasible. He thus applies only the Subparagraph (C) test and a modified version of the Subparagraph (A) test to any regulation categorized as an "accompanying enforcement procedure." This formulation allows him to ignore the need for such "enforcement procedures" under Subparagraph (B) and to ignore the direct impact of such "enforcement procedures" on air quality under Subparagraph (A). For all practical purposes these holdings of the court will supplant the express statutory tests of Section 209(b) in future waiver proceedings because California has established, and the Administrator has waived, numerical standards applicable through 1985. For the foreseeable future, as here, regulatory efforts will be to supplement those numerical standards with further regulations.

Amendment of the Regulations. Pursuant to Section 307 of the Act, 42 U.S.C. § 7607, petitioners then sought judicial review of the Administrator's action.[8] But after petitioners filed their opening brief, California, in a last ditch effort to save its scheme, *sua sponte* adopted emergency amendments to the in-use maintenance regulations. Those amendments continue to restrict manufacturers from effectively communicating what maintenance is required for proper operation of the vehicle and therefore is an appropriate prerequisite to warranty obligations under Section 207(a). While the amended regulations provide that manufacturers may "recommend" additional maintenance, automakers may "require" performance of only the original list of nine discrete maintenance operations. (J.A. A112.) And only "required" maintenance may be made a prerequisite to the manufacturers' obligation to honor statutory warranties for emissions parts. (J.A. A117-18.) This hastily contrived distinction between "required" and "recommended" maintenance instructions, unprecedented in industry custom or government regulations, can easily confuse car owners and prevents automakers from effectively disseminating information protected by the First Amendment. It also destroys completely the initial rationale underlying California's decision—that restrictions on recommended maintenance would reduce opportunities for tampering and improper maintenance. *See supra* at 7. California sought to rationalize this contradiction by contending that consumers will ignore mere "recommendations." (J.A. A119.) Moreover, the amendments make it crystal clear that California has set out to readjust the congressionally mandated balance between maintenance instructions and warranty requirements.[9]

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[8] Petitioner Automobile Importers of America, Inc. was allowed to intervene in support of the other automotive industry petitioners below. Respondent State of California was allowed to intervene in support of the federal respondents below.

[9] As numerical emissions standards have become more stringent over the years, new and more sophisticated emissions hardware has been developed. Common sense suggests that the need for preventive maintenance increases as technology becomes more sophisticated.

California's abrupt administrative flip-flop exposes the shallowness and fickleness of its entire regulatory approach. This is precisely the kind of ill-considered state action that Congress sought to guard against by providing for EPA review of California waiver requests. But despite these new alarm signals, EPA simply ruled by letter that the amended regulations "fall within the scope" of the original waiver. App. at 86a.

Decision of the Court Below. The central theme of petitioners' case in the court below was that the Administrator abdicated his statutory responsibilities through erroneous constructions of Section 209(b). However, starting from the premise that the Administrator's statutory interpretations must be upheld unless there is "clear and convincing evidence" that they are "unreasonable," slip op., App. at 17a, the court acquiesced in each of the Administrator's erroneous interpretations.

First, the court agreed, the Administrator's review is to be "largely ministerial," and California's waiver applications "are presumed to satisfy the waiver requirements and . . . the burden of proving otherwise is on whoever attacks them." *Id.*, App. at 49a, 55a n.56. In a companion case the court below stated that the Administrator's Section 209(b) review is to be "cursory." *Ford Motor Co. v. EPA,* No. 78-1791, at 21 (Aug. 17, 1979). Second, the court confirmed, EPA is prohibited from even considering the actual effect of the regulations on air quality, even though the court candidly acknowledged that the regulations might adversely affect air quality. Slip op., App. at 56a-58a. Third, the court concurred, the Administrator must ignore altogether the Section 209(b)(1)(B) test concerning California's "need" for in-use maintenance regulations. *Id.*, App. at 29a-35a. Fourth, the court agreed, Section 209(b) does not permit consideration of federal policies other than pollution control even though such policies (*e.g.*, competition) are embraced in the Act and would be germane to the Administrator's own rulemaking proceedings. *Id.*, App. at 38a-48a. Similarly, the court agreed that the Administrator "operates in a narrowly circumscribed proceeding requiring no broad policy judgments on constitutionally sensitive matters." *Id.*, App. at 36a. Moreover, the court summarily dismissed petitioners' constitutional contentions with the observation that the regulations were rationally related to a legitimate interest of the state. *Id.*, App. at 63a-65a.

(J.A. 1284, 3420-21, 3430-31, 3468.) Yet California asks manufacturers simultaneously to reduce maintenance requirements and to develop—and warrant—more sophisticated technology. At present that warranty extends for 5 years or 50,000 miles. *See supra* at note 3. But in a recent rulemaking EPA elongated the "useful life" over which automakers must warrant the emissions performance of heavy-duty engines. *See* 45 Fed. Reg. 4136, 4139-40 (1980). Manufacturers must now fear that California may elongate the "useful life" definition for passenger cars, thereby further complicating the problem of improving performance while reducing maintenance.

REASONS FOR GRANTING THE WRIT

The court below acceded to the Administrator's abdication of his statutory and constitutional responsibilities in Section 209(b) proceedings, rather than taking a hard and independent look at that abdication in the context of the policies intended to be protected by the Act. The court further upheld the waiver despite the infringement of the free speech rights of automakers and customers. The review of this Court is needed to overturn the lower court's undue deference to the Administrator's interpretations and its contravention of constitutional principles, to interpret properly Section 209(b), and to direct the conduct of further proceedings in conformity with the Act.

The case primarily involves the proper statutory interpretation of a novel experiment in federal preemption. If Congress had completely trusted California's judgment in promulgating its own emissions regulations, it simply would have exempted California from the preemptive effect of Section 209(a). Instead Congress set up an elaborate mechanism for EPA review. Contrary to established precedent on administrative proceedings, the court below has allowed the Administrator to act as a virtual bystander in a waiver proceeding, rather than requiring him to act as an administrative officer who must painstakingly assess

evidence and dig into the facts to determine whether congressional and constitutional policies are being advanced. The Administrator did not embark on such an inquiry because he believed he lacked the power under the Act to do so. Thus, the erroneous framework for Section 209(b) proceedings tolerated by the court below has fundamentally distorted the Administrator's waiver proceedings. Review by this Court is required to establish the Administrator's obligation under Section 209(b) to examine the record, to consider relevant evidence, and to make a meaningful inquiry into the effect of California's actions on air quality and other relevant federal statutory and constitutional policies.

The seeds for the lower court's errors of statutory interpretation were sown by the court's completely uncritical deference to the Administrator's untenable statutory interpretations. The lower court's abject deference to the Administrator's abdication of statutory responsibility is fundamentally contrary to principles previously announced by this Court. But the error of the court below underscores the need for this Court to clarify the law in this area of delicate interface between Congress, agencies, and the courts. This Court's review is also required to clarify the application of free speech principles to communications between automakers and their customers. Those communications are vital to consumers, are recognized by Congress in Section 207(c)(3) as essential to the policies of the Act, and are an integral aid to automakers in discharging their duty to certify and warrant that cars will meet emissions standards for five years or 50,000 miles. In fact, Congress has made such communications an essential part of manufacturers' statutory obligations by providing that an owner's failure to perform specified maintenance is a defense to an automaker's warranty and recall liability.

Left unchanged, the opinion of the court below will have serious implications for constitutional policies and the policies of the Act. California itself is a major market for new motor vehicles. Moreover, Section 177 of the Act, 42 U.S.C. § 7507, as amended in 1977, allows any other state that has not yet attained compliance with national air quality standards to "adopt

and enforce," *without further federal review,* California standards which have been waived by the Administrator. Thus, waiver proceedings for California regulations have the potential significantly to effect national ambient air quality and other important national interests, among which are free speech, automobile safety, energy conservation, the economic interests of individual consumers, and the continued economic viability of the automobile industry—including both manufacturers and suppliers of parts and services (the "aftermarket").

I. BY ACQUIESCING IN THE ADMINISTRATOR'S "MINISTERIAL" REVIEW, THE COURT BELOW SUBVERTED JUDICIAL PRECEDENT COMMANDING THAT THE ADMINISTRATOR AFFIRMATIVELY PROTECT NATIONAL POLICIES RECOGNIZED BY THE ACT.

The court below tolerated fundamentally distorted waiver proceedings. It agreed with the Administrator that his review is to be "largely ministerial," so that he must grant unopposed waivers and, in any event, may "sit back, 'like an umpire, and [merely] resolve adversary contentions,'" the ventilation of which depends solely "'upon the assiduousness' of private parties." Slip. op., App. at 55a n.56. To reach such conclusions, the court below disregarded the language of the Act, as well as its own precedents and those of other courts forbidding agencies to act like "umpires" and rely solely upon the "assiduousness" of private parties.[10]

By requiring a hearing and commanding that waivers be denied in statutorily defined circumstances, Congress has charged

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[10] *See Citizens Committee to Save WEFM v. FCC,* 506 F.2d 246, 262 n. 21 (D.C. Cir. 1974); *Brennan v. Occupational Safety & Health Review Commission,* 492 F.2d 1027, 1032 (2d Cir. 1974); *Greene County Planning Board v. FPC,* 455 F.2d 412, 420 (2d Cir.),*cert. denied,* 409 U.S. 847 (1972); *Moss v. CAB,* 430 F.2d 891, 893, 900 (D.C. Cir. 1970); *Office of Communication of the United Church of Christ v. FCC,* 425 F.2d 543, 546-48 (D.C. Cir. 1969).

the Administrator to represent and protect certain national interests. In such contexts, the courts have always held that administrative processes are designed to vindicate public policy, not simply to adjudicate among adversaries, and that agencies cannot leave to private parties the initiative to protect public policy. *See* the cases cited in the preceding footnote. Until the holding below, such a rule was thought to be imperative because there is no guarantee that some private party will always have the incentive, the knowledge, and the economic and other resources to intervene and show the adverse effects of a proposed action on the public policies intended to be protected by an agency. *Calvert Cliffs' Coordinating Committee v. AEC,* 449 F.2d 1109, 1119 (D.C. Cir. 1971). Fully aware of the need for a public guardian, Congress required review by the Administrator but nowhere assigned a role to private opponents of waiver requests, much less placed upon them the sole responsibility to police California's waiver requests.[11]

The most striking instance of the Administrator's pervasive abdication of responsibility, and of the court's sweeping tolerance thereof, involves the inexplicable conclusion that the Administrator need not and cannot consider what effect regulations proposed for waiver will have on air quality. *See supra* at 9-10, 12-13. When waiver is opposed by a private party under Section 209(b)(1)(A), the court below held, the Administrator is to consider only whether California's "determination" concerning air quality was "arbitrary and capricious," without considering the actual effect of the regulations themselves on air quality. *See supra* at 9,12. Under Section 209(b)(1)(B), the court insists, it is not relevant whether a regulation is needed to benefit air quality unless that regulation is a numerical emissions standard, as opposed to an "accompanying enforcement procedure." *See supra* at 9-10, 12-13. Yet how can the Administrator

[11] The most salient legislative history on this question appears in the House Report accompanying enactment of the Administrator's waiver authority. It reads, simply: "[Under Section 209(b) t]he burden would be on *the Secretary [of HEW, now the Administrator]* to show why California. . .should not be allowed to go beyond the Federal limitations in adopting and enforcing its own standards." H.R. Rep. No. 728, 90th Cong., 1st Sess. 96 (1967) (emphasis added).

evaluate California's "determination" without a probing inquiry into the real-world effect of the regulations? How can the Administrator conclude or a court agree that Congress intended waiver to be granted for regulations that will adversely affect air quality simply because those regulations are unopposed or are conveniently pigeonholed as "accompanying enforcement procedures"?

The lower court's tolerance for the Administrator's lack of diligence was especially egregious here because petitioners offered evidence that California's regulations would adversely affect air quality. *See supra* at 9. In fact, EPA conceded that there was evidence of adverse effects on air quality. EPA Br. at 54. Even California admitted that it could not estimate any potential beneficial effect on air quality from the regulations alone. (J.A. 144-45.)[12] And the court below conceded that

[12] The Administrator, of course, never questioned whether California had adequately disclosed the basis for its determination, *Kennecott Copper Corp. v. EPA,* 462 F.2d 846, 849 (D.C. Cir. 1972), even though California's "will be. . .as protective" determination was made many months after it adopted the in-use maintenance regulations and on a record containing no evidence on the issue.

Prior to August 1977, Section 209(b) imposed no factfinding duty on California comparable to its present obligation to make an unequivocal "will be. . .as protective" determination. California's in-use maintenance regulations were adopted under that version of Section 209(b), when all factfinding resided with the Administrator. *See* Pub. L. No. 90-148, § 22, 81 Stat. 501 (1967), *renumbered and amended,* Pub. L. No. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713 (1970). In August 1977, while this waiver application was pending, Congress amended Section 209(b), delegating to California the responsibility to determine that its regulations will be as protective of the "public health and welfare" as applicable federal regulations, subject to the Administrator's review. Because the 1977 amendments applied to pending waiver proceedings, the ARB passed a *pro forma,* omnibus resolution on September 30, 1977, purporting to make the required determination for all regulations pending waiver. (J.A. 276-80.) However, the "will be. . .as protective" determination for the in-use maintenance regulations was not supported by evidence or analysis. Nonetheless, neither the Administrator nor the court below expressed any interest in whether California had in fact discharged its specific responsibility under the Act or had simply gone through the motions.

"[t]here is certainly room for disagreement about the potential benefits of the in-use maintenance regulations." Slip. op., App. at 57a. Petitioners are not the federal guardian of air quality, commissioned, dedicated, and equipped to understand the sometimes ellusive effects of emissions regulations on air quality—the Administrator is. Had the Administrator himself probed the record after being alerted to potential problems, he might have found even more such evidence. The lower court's tolerance of the Administrator's refusal to even consider such evidence was in stark conflict with this Court's command in *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402, 416 (1971), directing agencies to investigate all relevant factors. Likewise, his failure, with the court's acquiescence, to search the record for any rational basis to support California's determination was contrary to this Court's holding in *Bowman Transportation, Inc. v. Arkansas-Best Freight System,* 419 U.S. 281, 285 (1974), directing agencies and reviewing courts to probe the facts thoroughly to determine whether there is any rational connection to the decision made.[13]

II. THE COURT BELOW ERRONEOUSLY UPHELD THE ADMINISTRATOR'S REFUSAL TO CONSIDER THE EFFECT OF PROPOSED WAIVERS ON SUCH STATUTORILY RELEVANT POLICIES AS "PUBLIC HEALTH AND WELFARE," AUTOMOBILE SAFETY, AND COMPETITION.

The court below not only sanctioned the Administrator's indifferent attitude toward the protection of air quality, it also acquiesced in the Administrator's refusal to consider the impact of California's regulations on other national values, including

[13] The Administrator and the court below thus conspired in creating a process that runs afoul of the Act's long recognized requirements for procedural integrity and reasoned decisionmaking. *See, e.g., South Terminal Corp. v. EPA,* 504 F.2d 646 (1st Cir. 1974); *Essex Chemical Corp. v. Ruckelshaus,* 486 F.2d 427 (D.C. Cir. 1973), *cert. denied,* 416 U.S. 969 (1974); *International Harvester Co. v. Ruckelshaus,* 478 F.2d 615 (D.C. Cir. 1973).

automobile safety, fuel economy, and the economic welfare of various segments of the automotive industry, the protection and enhancement of which are required by the Act. *See, e.g.,* §§ 202(a)(2), (4), 207(c)(3), 317(a), (c), 42 U.S.C. §§ 7521(a)(2), (4), 7541(c)(3), 7617(a), (c).[14] The court below thus condoned a narrow categorical approach to regulatory decisionmaking, contrary to Section 209(b), the policies of the Act, and judicial precedent.

Congress has required EPA to take a broad view of regulatory impacts when it regulates new motor vehicle emissions in the 49 states other than California. *See* the authorities just cited. And Section 209(b) shows that Congress intended California to do the same, subject to EPA review. California is to make, and the Administrator is to review, a determination that its standards "will be . . . as protective" as federal standards of the "public health and welfare." The latter is defined to include, in part, "damage to and deterioration of property, . . . hazards to transportation, . . .[and] effects on economic values." Act § 302(h), 42 U.S.C. § 7602(h). Section 209(b) thus fully authorizes—indeed, directs—the Administrator to inquire into the effects of the proposed waiver on national values other than air quality embraced within the Act.

The court below acquiesced in the Administrator's contention that the phrase "public health and welfare" embraces only

[14] Section 202(a)(4) requires, *inter alia,* that emissions standards be consistent with automotive safety. Section 207(c)(3) requires that the statutorily required maintenance instructions leave intact the competition between manufacturers and the aftermarket to provide goods and services. Sections 202(a)(2) and 317(a), (c) require that EPA consider, *inter alia,* the cost of complying with a regulation and the effects of a regulation on consumer costs and energy use. The court below, noting that Section 209 also evidences the strong congressional interest in the economic welfare of the automobile industry, found that Congress had preempted state emissions regulations to prevent "the spectre of an anarchic patchwork of federal and state regulatory programs, a prospect which threatened to create nightmares for the manufacturers." Slip. op., App. at 24a (footnote omitted).

those aspects of the public interest directly affected by air pollution (*e.g.*, health), not public interests adversely affected by *regulation* of pollution (*e.g.*, competition in the automobile industry). Slip op., App. at 38a-48a; 43 Fed. Reg. at 32184, App. at 82a; EPA Br. at 74-79. But at this crucial juncture of our history, neither an administrator nor a court should lightly conclude that Congress intended an agency to pursue its special mandate oblivious to the consequences for competing national priorities. *See* ABA Commission on Law and the Economy, *Federal Regulation: Roads to Reform* 68-91 (Dec. 1979). Such rigid "tunnel vision" perverts congressional intent by destroying the flexibility and informed discretion that Congress seeks in the administrative process. It is nowhere more dangerous than in regulation of the automobile industry—where competing national goals of air quality, automobile safety, energy conservation, economic stability of the automobile industry, and preservation of competition (both among manufacturers and between manufacturers and the aftermarket) all claim a high priority.

Absent an explicit congressional prohibition, the court below should have presumed some limited discretion to consider other affected policies, *see Richmond Power & Light v. FERC*, 574 F.2d 610, 616 n.22 (D.C. Cir. 1978),[15] even if Congress had not explicitly provided such authority by incorporating the "public health and welfare" test in Section 209(b), by defining that test broadly in Section 302(h), and by indicating its interest in such policies in the statutory provisions cited above. The

[15] This Court has specifically held that competitive considerations are relevant to a broad range of administrative proceedings. *See, e.g., Gulf State Utilities Co. v. FPC*, 411 U.S. 747 (1973); *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968). Here the aftermarket petitioners contended that the regulations in question would reduce the business available to them because more maintenance would be performed under warranty. The court below, however, held that neither the Administrator nor it was required to consider these claims of anti-competitive impact in Section 209(b) proceedings, despite the court's recognition of congressional concern over this issue. Slip. op., App. at 47a.

court's obsessively narrow decision seems particularly inappropriate when Congress is debating radical solutions to the severe problem of costly, single-purpose regulations (*e.g.*, one House vetoes of agency regulations, a burden of proof on agencies to demonstrate the lawfulness of agency action, etc.).

III. THE COURT BELOW ERRED BY ALLOWING THE ADMINISTRATOR TO IGNORE FIRST AMENDMENT RIGHTS AND BY UPHOLDING THE CONSTITUTIONALITY OF THE REGULATIONS CONTRARY TO THIS COURT'S MANDATE IN *VIRGINIA STATE BOARD.*

Petitioners contended at the Administrator's hearing that California's regulations were illegal and thus could not be waived by the Administrator because they restricted constitutionally protected free speech by forbidding manufacturers from recommending to the consumer concededly lawful maintenance. Leaving emissions control aside, petitioners wanted to inform customers that such maintenance was necessary for safety, fuel economy, and overall satisfactory vehicle performance. *See supra* at 5 - 7. Customers desire and depend upon such assistance. In addition, Section 207(c)(3) requires that automakers provide "proper" instructions for the in-use maintenance of emissions control equipment. All these communication interests of automakers and consumers are constitutionally protected. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

The court below nonetheless sustained the Administrator's refusal to consider constitutional contentions on the ground that he "operates in a narrowly circumscribed proceeding." *See supra* at 13. Such precedent is mischievous; it also conflicts with decisions in other circuits.[16] In *SEC v. Wall Street Transcript*

[16] The Administrator's refusal to consider constitutional issues cannot be defended on the ground that an administrative agency may not hold unconstitutional the very act administered by it. *See Engineers Public Service Co. v. SEC*, 138 F.2d 936, 953 (D.C. Cir. 1943), *vacated on other grounds*, 332 U.S. 788 (1947). Here the petitioners did not

Corp., 422 F.2d 1371, 1380 (2d Cir.), *cert. denied,* 398 U.S. 958 (1970), for example, the court held that First Amendment values must be recognized in SEC investigations. In *Midwest Video Corp. v. FCC,* 571 F.2d 1025, 1042 (8th Cir.), *aff'd,* 440 U.S. 689 (1978), the court said that "[e]very regulatory agency should have all constitutional 'goals' and restrictions on government in mind in carrying out its duties . . . ." At a minimum, the Administrator's inquiry would have provided important administrative guidance on the factual inquiries relevant to subsequent free speech analysis by the court. *Compare Eisen v. Eastman,* 421 F.2d 560 (2d Cir. 1969), *cert. denied,* 400 U.S. 841 (1970), *with Plano v. Baker,* 504 F.2d 595 (2d Cir. 1974).

The court below also erred in rejecting on the merits petitioners' First and Fourteenth Amendments challenge to waiver of the regulations. The court stated that California's regulations are constitutional if they have "a reasonable basis in a legitimate governmental policy." Slip. op., App. at 64a. Such a rationally-related test, however, was specifically rejected by this Court in *Virginia State Board,* 425 U.S. at 768-69, where this Court stated the correct test as: whether California *needed* its regulations to accomplish a legitimate state interest. *See id.* at 769-70; *Linmark Associates, Inc. v. Township of Willingboro,* 431 U.S. 85, 95 (1977). Moreover, in two other cases this Court has noted probable jurisdiction and will address the justification constitutionally required when a state restricts communications between industry and consumers despite the importance of such communications in our free enterprise economy. *See Consolidated Edison Co. v. Public Service Commission,* No. 79-134, *prob. jur. noted,* 100 S.Ct. 41 (1979); *Central Hudson Gas & Electric Corp. v. Public Service Commission,* No. 79-565, *prob. jur. noted,* 100 S.Ct. 446 (1979). If this Court does not immediately issue the writ of certiorari in order to reverse the court below for its disregard of the standard set forth in *Virginia State*

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challenge the constitutionality of the Act. They simply contended that the unconstitutional regulations proposed by California were invalid and thus did not come within the Administrator's waiver powers.

Board, petitioners respectfully request that the Court hold this case pending further clarification and elaboration of that standard in *Consolidated Edison* and *Central Hudson.*

If the court below had applied the proper test, it would have concluded that the in-use maintenance regulations violate constitutional standards. California has sought to suppress the exchange of legitimate information, thus attempting to solve indirectly a problem that it could have addressed directly without any infringement of speech (*e.g.,* by expanding anti-tampering regulations or vehicle inspection programs). *See Bates v. State Bar of Arizona,* 433 U.S. 350, 363-79 (1977); *Carey v. Population Services International,* 431 U.S. 678, 700-02 (1977); *Linmark Associates, Inc.,* 431 U.S. at 96-97; *Virginia State Board,* 425 U.S. at 769-70. In order to give their customers all relevant information, manufacturers must issue two types of maintenance instructions—those that are "required" and those that are merely "recommended." That duality will undermine consumer confidence in the manufacturers' instructions by telling purchasers that the state believes that the manufacturers are recommending "unnecessary" maintenance. The regulations therefore penalize manufacturers' attempts to communicate important information, contrary to First Amendment principles. *See Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 256-58 (1974).

The waiver also will frustrate completely the effectiveness of automakers' communications because the regulations create powerful economic and psychological incentives for the consumer to disregard manufacturers' "recommendations." If a consumer performs "recommended" preventive maintenance to maximize the safe and efficient use of his car, he must pay for it; if he neglects it, the manufacturer may be obliged to pay for the maintenance under the statutory warranties. California itself has stated that consumers will ignore mere "recommendations." (J.A. A119.) Thus, contrary to the Constitution, the regulations will cause manufacturers to lose goodwill and suffer higher warranty expenses, while depriving consumers of valuable information that would enhance the useful-

ness of their automobile investment. *See Bates,* 433 U.S. at 363-64, *Virginia State Board,* 425 U.S. at 769-70.[17]

IV. THE COURT BELOW ADOPTED AN EXTRAORDINARY AND EXCESSIVE STANDARD OF DEFERENCE TO THE ADMINISTRATOR'S STATUTORY INTERPRETATIONS.

This Court has long held that in interpreting statutes, courts should not be oblivious to the statutory interpretations of agencies charged with administering the statute in question. In the myriad of relevant cases, there is no set formulation of the proper degree of judicial deference because courts carefully tailor their decisions to the particular question of statutory interpretation. *See, e.g.,* K. Davis, *Administrative Law Treatise* Ch. 30 (1958). The one enduring principle, however, is that courts retain the final, and independent, responsibility to interpret the statute:

> "[T]he courts are the final authorities on issues of statutory construction, *FTC* v. *Colgate-Palmolive Co.,* 380 U.S. 374, 385, and 'are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.' *NLRB* v. *Brown,* 380 U.S. 278, 291. 'The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia . . . .' *American Ship Building Co.* v. *NLRB,* 380 U.S. 300, 318." *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission,* 390 U.S. 261, 272 (1968).

The court below exceeded the limits on a court's deference by announcing a breathtakingly broad standard of deference

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[17] *See also Miami Herald Publishing,* 418 U.S. at 256 (footnote omitted) ("[The] argument that the Florida statute does not amount to a restriction of appellant's right to speak because 'the statute in question here has not prevented the *Miami Herald* from saying anything it wished' begs the core question. Compelling editors or publishers to publish that which ' "reason" tells them should not be published' is what is at issue in this case.")

wholly inappropriate to questions of the kind at issue: "For us to conclude that the Administrator misconstrued section 209 petitioners must show by *clear and convincing evidence* that his construction [of the statutory language] is *unreasonable.*" Slip op., App. at 17a (emphasis added). The court thus elevated the Administrator's interpretations to a pedestal above the plain meaning of the statutory language, congressional intent, and the court's independent interpretation and required petitioners to show that such interpretations were not only erroneous, but also "unreasonable."

Such abject judicial deference is never appropriate, for it is completely inconsistent with administrative subjugation to the congressional will. Under the court's test, the construing agency, not the enacting Congress, determines what the law shall be. And this standard was particularly inappropriate for the issues in this case. Here the Administrator has avowedly sought to play the narrowest role possible under Section 209(b), creating an acute danger that Congress' intent to protect a federal interest will be frustrated. Moreover, the court's deference to that view conflicts with analogous cases where courts have refused to defer to agency interpretations. In *Calvert Cliffs' Coordinating Committee v. AEC,* 449 F.2d 1109 (D.C. Cir. 1971), for example, the AEC promulgated licensing rules under which it would consider certain environmental questions only when raised by private intervenors. The court below brushed aside the AEC's attempted statutory justifications:

> "In recent years, the courts have become increasingly strict in requiring that federal agencies live up to their mandates to consider the public interest. They have become increasingly impatient with agencies which attempt to avoid or dilute their statutorily imposed role as protectors of public interest values beyond the narrow concerns of industries being regulated." *Id.* at 1119 n.21.

In short, until the decision below, the law was that a court could not defer to an agency's self-effacing interpretations of its basic authority when such interpretations threaten the public interest. *See Baltimore & O.R. Co. v. United States,* 386 U.S. 372, 438

n.32 (1967) (Brennan, J., concurring); *see also* the cases cited *supra* at note 10. The lower court's disregard of that principle becries the need for this Court's review.[18]

The lower court's failure to follow its own pronouncement in *Calvert Cliffs'* is especially troublesome because of the unavoidable suspicion that the court deferred to the agency more readily when business interests sought judicial review than when "public interest groups" sought review. *Cf.* the cases cited *supra* at note 10. No principled basis exists to support so much deference in the one case and so little in the other. As Mr. Justice Black once said: "It does not matter who sues, if the court decides an issue of statutory interpretation that decision should remain the same even if the litigants change." *Zuber v. Allen,* 396 U.S. 168, 205 (1969) (dissenting).

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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[18] Recently the Senate adopted the Bumpers Amendment, S. 111, 96th Cong. 1st Sess. (1979). *See* 125 Cong. Rec. S12171-72 (1979). It forbids any judicial deference to agency statutory interpretations. The Senate's action is evidence of the growing national concern that decisions such as that below are turning our legislative democracy into a bureaucracy.

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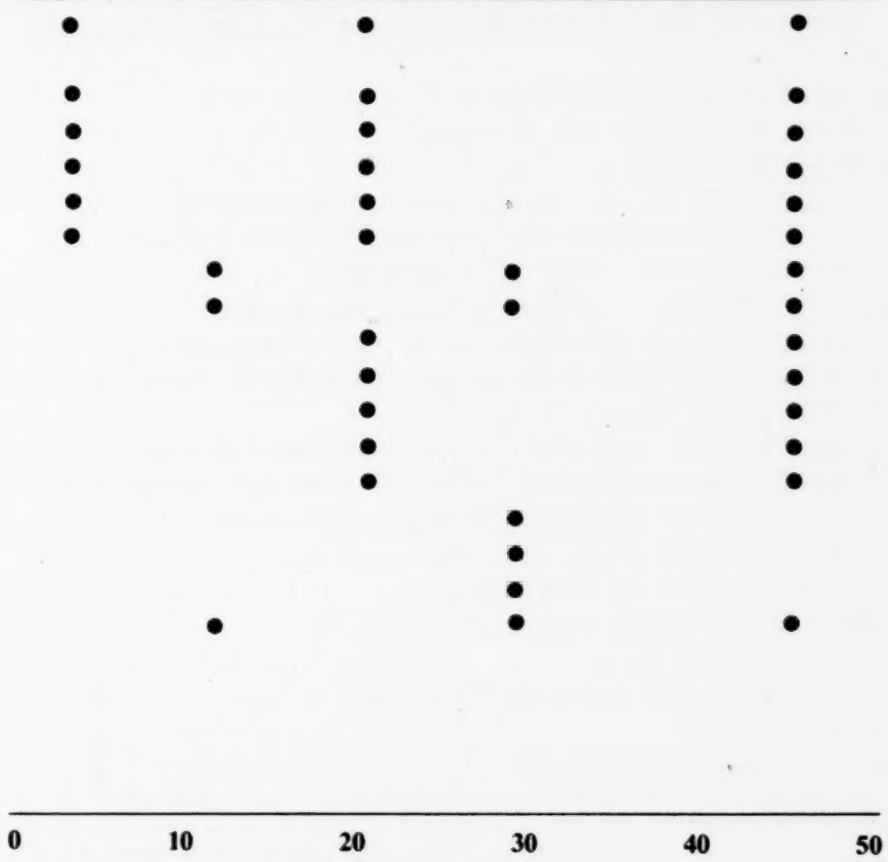
February 14, 1980

TABLE I—MAINTENANCE REQUIREMENTS GENERAL MOTORS WOULD HAVE MADE IN 1980 ABSENT ARB REGULATIONS

DESCRIPTION OF MAINTENANCE*	MAINTENANCE FREQUENCY
THERMOSTATICALLY CONTROLLED AIR CLEANER—Check operation	7,500 Miles, 22,500 Miles, 45,000 Miles
CARBURETOR CHOKE—Check operation and lubrication	7,500 Miles, 22,500 Miles, 45,000 Miles
ENGINE IDLE SPEED ADJUSTMENT	7,500 Miles, 22,500 Miles, 45,000 Miles
EFE SYSTEM—Check operation	7,500 Miles, 22,500 Miles, 45,000 Miles
CARBURETOR—Torque attaching bolts or nuts to manifold	7,500 Miles, 22,500 Miles, 45,000 Miles
VACUUM ADVANCE SYSTEM AND HOSES—Check operation	7,500 Miles, 22,500 Miles, 45,000 Miles
CARBURETOR FUEL INLET FILTER—Replace	15,000 Miles, 30,000 Miles, 45,000 Miles
PCV SYSTEM—See Explanation of Maintenance Schedule	15,000 Miles, 30,000 Miles, 45,000 Miles
SPARK PLUG AND IGNITION COIL WIRES—Inspect and clean	22,500 Miles, 45,000 Miles
IDLE STOP OR SPEED UP SOLENOID OR DASHPOT—Check operation	22,500 Miles, 45,000 Miles
SPARK PLUGS—Replace	22,500 Miles, 45,000 Miles
ENGINE TIMING ADJUSTMENT AND DISTRIBUTOR CHECK	22,500 Miles, 45,000 Miles
CARBURETOR VACUUM BREAK INSPECTION AND ADJUSTMENT	22,500 Miles, 45,000 Miles
ECS SYSTEM—See Explanation of Maintenance Schedule	30,000 Miles
FUEL CAP, TANK AND LINES—Check condition	30,000 Miles
AIR CLEANER ELEMENT—Replace	30,000 Miles
DRIVE BELTS—Check condition and adjustment	30,000 Miles
IGNITION DWELL EXHAUST GAS RECIRCULATION SYSTEM IDLE MIXTURE VALVE LASH ADJUSTMENT CATALYST	NO MAINTENANCE RECOMMENDED

Note: *Based on General Motors Emission Control Maintenance Schedule I.

(J.A. 3320)



Mileage of Vehicles Examined by ARB Staff (12-19K Miles)

April 1977

TABLE II—MAINTENANCE REQUIREMENTS ALLOWED BY ARB REGULATIONS

DESCRIPTION OF MAINTENANCE
THERMOSTATICALLY CONTROLLED AIR CLEANER—Check operation
CARBURETOR CHOKE—Check operation and lubrication
ENGINE IDLE SPEED ADJUSTMENT
EFE SYSTEM—Check operation
CARBURETOR—Torque attaching bolts or nuts to manifold
VACUUM ADVANCE SYSTEM AND HOSES—Check operation
CARBURETOR FUEL INLET FILTER—Replace
PCV SYSTEM—See Explanation of Maintenance Schedule
SPARK PLUG AND IGNITION COIL WIRES—Inspect and clean
IDLE STOP OR SPEED UP SOLENOID OR DASHPOT—Check operation
SPARK PLUGS—Replace
ENGINE TIMING ADJUSTMENT AND DISTRIBUTOR CHECK
CARBURETOR VACUUM BREAK INSPECTION AND ADJUSTMENT
ECS SYSTEM—See Explanation of Maintenance Schedule
FUEL CAP, TANK AND LINES—Check condition
AIR CLEANER ELEMENT—Replace
DRIVE BELTS—Check condition and adjustment
IGNITION DWELL
EXHAUST GAS RECIRCULATION SYSTEM
IDLE MIXTURE
VALVE LASH ADJUSTMENT
CATALYST

MAINTENANCE FREQUENCY

5,000 Miles 15,000 Miles 22,500 Miles 30,000 Miles 37,500 Miles 45,000 Miles

